

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 09-66487

LORRAINE MAY MINIDIS, *pro se*,

Chapter 13

Debtor.

Judge Thomas J. Tucker

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ORDER DISMISSING CASE

On August 26, 2009, Debtor filed a voluntary petition for relief under Chapter 13, initiating this case, and also filed "Exhibit D" (Individual Debtor's Statement of Compliance With Credit Counseling Requirement)(Docket # 1). Debtor checked Box 2 on Exhibit D, which provides:

2. Within the 180 days **before the filing of my bankruptcy case**, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, but I do not have a certificate from the agency describing the services provided to me. *You must file a copy of a certificate from the agency describing the services provided to you and a copy of any debt repayment plan developed through the agency no later than 15 days after your bankruptcy case is filed.*

On September 10, 2009, Debtor filed a document entitled "Request for Thirty-Day Extension of Time to Receive Credit Counseling and File Certification of Same" (Docket # 23).

On this document, Debtor checked the box which stated:

I . . . certify the exigent circumstances that merit a 30-day extension of the time to receive credit counseling and file with the court a certificate of completion are: Performed the debtor education, Computer died (with all paper work on it) had to repair computer (and borrow money)(have receipts upon request) and now have no money to perform second part until Sat. 9-12-09 my apologies.

For the following reasons, the Court must dismiss this case. 11 U.S.C. § 109(h)(1)

requires that a debtor obtain a credit counseling briefing **before** filing a bankruptcy petition, in order to be eligible to be a debtor under the Bankruptcy Code. That section provides in relevant part, that

an individual may not be a debtor under this title unless such individual has, **during the 180-day period preceding the date of filing the petition by such individual**, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

(Emphasis added). 11 U.S.C. § 109(h)(3) provides a limited exception to § 109(h)(1)'s requirement of obtaining a credit counseling briefing **before** filing the bankruptcy petition. This exception permits a debtor to obtain the required credit counseling briefing up to 30 days after filing the petition, and upon entry of an order for cause shown, up to 45 days after filing the petition. Section 109(h)(3)(A) provides:

(3) (A) Subject to subparagraph (B), the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that--

(i) describes exigent circumstances that merit a waiver of the requirements of paragraph (1);

(ii) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services referred to in paragraph (1) during the 5-day period beginning on the date on which the debtor made that request; and

(iii) is satisfactory to the court.

E.D. Mich. LBR 1007-6(a) provides the procedure that a debtor must use when filing a

certificate of exigent circumstances under § 109(h)(3)(A):

(a) Certification Procedures. A debtor who files a certification under § 109(h)(3)(A) shall also file a motion for approval of the certification. The debtor shall file the certification and the motion with the petition, serve it on all parties and file a certificate of service. The deadline to file a response shall be 10 days after service. If no timely response is filed, the certification shall be deemed satisfactory under § 109(h)(3)(A)(iii) without a hearing or further order. The motion shall be accompanied by a notice that the deadline to file a response is 10 days after service and that if no response is filed, the court will deem the certification satisfactory under § 109(h)(3)(A)(iii) without a hearing.

In this case, Debtor failed to comply with the requirements of both § 109(h)(3)(A) and LBR 1007-6.

First, no certification of exigent circumstances was filed *with the petition*. Debtor's purported certification of exigent circumstances was filed 15 days after the petition.

Second, Debtor's purported certification of exigent circumstances does not give a satisfactory explanation of why Debtor could not obtain credit counseling before filing her bankruptcy petition, so Debtor's certification is not "satisfactory to the court" as required by 11 U.S.C. § 109(h)(3)(A)(iii).

Third, Debtor never filed a motion for approval of her certification of exigent circumstances (timely or otherwise), as required by LBR 1007-6(a).

For these reasons, the Debtor was required to meet the requirement of 11 U.S.C. § 109(h)(1), that she obtain credit counseling *before* filing her bankruptcy petition, in order to be eligible to be a debtor in this case. To date, Debtor has not filed a credit counseling certificate showing that she met this requirement.

For these reasons, Debtor is not eligible to be a debtor in this case under 11 U.S.C. § 109(h)(1), and this case must be dismissed. Accordingly,

IT IS ORDERED that this bankruptcy case is DISMISSED.

Signed on September 18, 2009

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge